

Appendix N

Danielle Droitsch; Vice President of the Board for the Foundation for Global Sustainability on behalf of East Tennessee Headwaters Program, Project of Foundation for Global Sustainability:

A) We are pleased to submit the following comments on Tennessee's proposed Source Water Assessment Program which will take the needed steps to implement the 1996 Amendment to the Safe Drinking Water Act. Because of the short time period between the public meeting where we first learned about this proposal and the deadline for these comments, we would like to reserve the opportunity to provide supplemental comments to more comprehensively reflect all of our views on this program.

State Response: It is unfortunate with the required EPA deadline of February 6 that we were unable to have the comment period available longer. Unfortunately, the Division of Water Supply was not aware that ETHP/FGS wished to have a more active role in the development process from the initial contact in late September.

B) The East Tennessee Headwaters Project (ETHP) believes that Tennessee's SWAP program is an important opportunity to advance the protection of Tennessee's drinking water. Safe drinking water is absolutely essential to the quality of life in a community as it is the link between public health and the quality of the public water supply. The original Federal Safe Drinking Water Act passed by Congress in 1986 began the process of addressing contamination of public water supplies and helped lead Tennessee toward the establishment of our wellhead protection program. Twelve years later, Congress continues to amend and improve this law recognizing that in order to achieve full protection of drinking water sources, states and communities will need to adopt prevention programs and source water protection plans in order to protect source waters which will supply drinking water.

*State Response: The Division of Water Supply appreciates your ETHP's interest and concern in protecting public water supplies. SWAPs are not intended to replace existing programs addressing pollution sources. . Congress did not require states to go beyond the Source Water Assessment phase and create a radically new "protection program." The EPA guidance document clearly states that **"The new amendments do not confer any new regulatory or enforcement authorities for drinking water source protection upon the states.** Congress required development of Assessment Program, but the protection plans were not required, and neither the funding nor the authority was given to proceed further.*

Please note that the Safe Drinking Water Act was authorized in 1974 and it is only with the 1986 Amendments that prevention became more of a focus. The most recent Amendments were in 1996, although the states did not begin in earnest until after August of 1997 when the EPA Guidance Document was published.

C) A good prevention program always begins with good information which is exactly why Tennessee's source water assessment is the first step. The information gathered in these efforts can then empower local governments, water suppliers, and the public to work toward the development and implementation of source water protection plans. Significantly, the EPA has stated that these "assessments be viewed not as activities done for their own sake, but to protect source waters, and to establish a 'good science' basis for providing greater regulatory flexibility to reduce costs and maintain the delivery of safe drinking water to the public."

State Response: See response under B.

D) In addition, "preventing contamination of water supplies makes good sense in terms of both public health and economics – and, it preserves our resources for the future. Cleaning up contaminated drinking water can cost millions, and the costs of providing safe drinking water through treatment also are increasing as regulations addressing public health concerns expand. Source water protection can prevent contamination at a fraction of these costs" according to EPA guidance for implementing SWAP.

State Response: The Division of Water Supply strongly agrees,

E) The 1996 SDWA Amendments incorporate this goal of prevention and preservation and take a first step by requiring states to adopt Source Water Assessment Programs. Under the SDWA, Tennessee's SWAP must "(1) set forth the state's strategic approach to conducting the assessments, (2) delineate the boundaries of the areas providing source waters for PWSs; and (3) identify, to the extent practical, the origins of regulated and certain unregulated contaminants in the delineated area to determine the susceptibility of PWSs to such contaminants."

State Response: Yes, this is correct.

F) We appreciate Tennessee's efforts to begin the process of outlining a SWAP program for Tennessee and are very interested in continuing a public discussion about how it can be most effective. In particular, we would like to continue this dialogue through the December 31, 1998 deadline for comments as the public meetings outlining this program occurred shortly before the Christmas holiday and did not present a great deal of time for evaluation and questions. Because of these circumstances, we hope that both the EPA and TDEC will be open to discussion about this program and how it can be most effective for Tennessee's source waters. We have several additional comments regarding public participation below.

State Response: With the February 6th deadline set by Congress, the State had little choice but to end the official comment period when it did to allow time for the final writeup for the submittal. There were no other organizations requesting a lengthened comment period. Since the December 31 end of comment period was posted in the public notices that appeared in newspapers across the state, it would not have been appropriate to extend it for one organization. {Division of Water Supply staff did as well as a

representative from TDEC's Environmental Policy Office did meet with ETHP/FGS members and the Tennessee Environmental Council director on Tuesday, February 26 and clarified some of the issues of concern}.

Tennessee Overall Approach to Conduct Source Water Assessments

G) We understand that the very small TDEC staff assigned to this overwhelming task did an extraordinary amount of work to conduct the public participation process and program submittal. There is no doubt that this work has been placed on only a few shoulders at the Division of Water Supply and they deserve great credit for what they have accomplished. We applaud them.

State Response: The Division of Water Supply appreciates ETHP's supportive comments.

We should note, however, that our evaluation of the program below is not based on the limited resources which were dedicated toward the implementation of this program. The following evaluation is based on what was originally intended by Congress in implementing the SDWA and subsequent federal guidance issued in 1997 outlining what the SWAP program is intended to accomplish toward the goal of safe drinking water. While lack of resources continues to be a necessary part of any discussion about this program and its potential for overall effectiveness, discussion must focus equally on the intended goals of Congress and EPA's guidance.

State response: The Division of Water Supply's mission on developing these SWAPs has been: keep it (1) Meaningful, (2) Practical, (3) Reasonable, (4) Implementable, and (5) Understandable as well as to address all of the minimum items for consideration outlined in guidance. The Division of Water Supply absolutely must take into account the available resources to dedicate to the program. TDEC cannot undertake a project/program without considering whether or not it has the resources to carry it out. Note that EPA's Guidance Document is just that – it is not a set of regulations.

I) Tennessee's overall approach toward the SWAP proposal is strong for its incorporation of existing Clean Water programs already operated in Tennessee such as the Wellhead Protection Program and the Watershed Management Program. In general, however, the description provided in the "Overview" does not go far enough to explain how the program will actually work. In addition to this general comment which we have elaborated on below, we have provided substantive comments about what is actually proposed.

State Response: Please note that the Wellhead Protection Program is under the Safe Drinking Water Act administered by the Division of Water Supply and that this program in keeping with its authority under the Safe Drinking Water Act regulates water systems, not potential contaminant sources. Apparently the "Overview" copy the respondent refers to was the very limited scope early draft off of the TDEC webpage. The webpage draft was merely designed to be a condensed briefing document (body of text is 10 pages) of what Source Water Assessment/Protection was about in layman's terms since the EPA

Guidance document is 100+ pages long and involved reading. The second draft of the “Overview” and the Susceptibility Analysis handed out to attendees at the public meetings, including ETHP members presented the program in much more detail.

1. It is never stated or explained exactly how this assessment will provide “protection and benefit of the public water system.” SDWA 1453(a)(1)

State response: This could perhaps have been better stated and more prominent, but it is in the Overview as allowing them to better manage, plan and prioritize. The workplan section in the submittal discussed this better. Early on in the assessment process, the water systems are being interviewed about concerns in their area and were surveyed in 1997 prior to the SWAP kickoff. The Tennessee Association of Utility Districts, Tennessee’s member of the National Rural Water Association and their board would not be contracting with the State to perform the assessments if they did not feel it would benefit the water systems.

2. It is stated the susceptibility analysis has been developed for ground water systems to supplement Tennessee’s existing wellhead protection program. Has a susceptibility analysis been developed for the surface water program?

State response: The susceptibility analysis of surface water systems is an integral part of the assessments and a primary focal point. A separate Susceptibility Analysis Document detailing the process for both ground water and surface water systems was handed out at the public meetings and given to the members of ETHP that attended. It was also briefly discussed in the second draft of the Overview that was also handed out at the meetings.

3. Similarly, it appears the delineations for ground water systems will be the same already used for wellhead protection. It is unclear, however, what delineation method is being used for surface waters.

State response: The delineation method has been addressed in detail in the current draft of Tennessee’s SWAP Overview that was handed out at the public meetings. The State is using a simplified time of travel method.

4. As already stated above, the SWAP proposal does not contain a lot of information about how exactly the program will be implemented. For examples, there are no timelines, workplans, goals, tactics. It is unclear exactly how TDEC proposes to integrate the intended goals of SWAP into Wellhead Protection or Watershed Management Programs.

State response: This is admittedly unclear in the Overview but was discussed at the public meetings and is discussed in more detail in the submittal. TDEC is in the last phases of implementing a contract with the Tennessee Association of Utility Districts to perform the field activities. It would have been premature to

discuss a workplan or timelines in the early stages of contract negotiation. Tactics were described in the second draft of the Overview. The submittal includes a copy of the workplan with a discussion of goals, etc. and an implementation schedule. {ETHP was given implementation schedule at January 26th meeting.}

Integration with the Watershed Management Program and individual watershed management plans is discussed in the second Overview draft that was handed out at the public meetings and the attending members of ETHP. As far as integrating with Wellhead Protection, SWAP is seen as a followup phase to wellhead protection – “icing on the cake.” The Division of Water Supply sees no need to integrate wellhead protection with SWAP for a very simple reason – both programs are being run out of the Division of Water Supply and the Wellhead Protection Coordinator for Tennessee is also the Source Water Protection Coordinator.

5. Under section “Tennessee’s Source Water Assessment Approach” that TDEC wishes to “emphasize emergency response, enhanced communications and public awareness/industry involvement for surface water systems ... [and the] emphasis for protection/management efforts will be concentrated on wellhead protection program where long-term contamination is a demonstrated problem.” How exactly will emergency response be emphasized? How will protection/management efforts be concentrated on wellhead protection. Will more funds be dedicated toward this area? Will there be certain areas targeted for protection?

State response: The Division's position has changed on this and the language has been changed to reflect the integration with the Watershed Management Program. There do still need to be improvements in the area of emergency response, communications, etc. Tennessee Emergency Management Agency has the primary responsibility of emergency response in Tennessee by law. The Division's intent is to improve the level of information available to TEMA and TDEC staff outside the Division of Water Supply to allow for more informed responses. In addition there will be an effort to inform those facilities/activities upstream of the intake(s) to contact the water system as well as TEMA in the case of a spill.

It is also a matter of use of resources to continue concentrating on the existing wellhead protection program which has a body of regulations to back it up and a demonstrated need. Protection/ management efforts within the Division of Water Supply will necessarily focus on Wellhead Protection – the Ground Water Management Section in the Division of Water Supply does coordinates the Wellhead Protection Program and is in charge of the Underground Injection Control Program, which has regulatory authority over discharges to ground water. The Division of Water Pollution Control has the regulatory authority for

discharges to surface water under the same Tennessee Water Quality Control Act the UIC program is under.

Source Water Protection Funds from the Drinking Water State Revolving Fund are one time only monies. At this time, no additional funding has been discussed. The setaside for Wellhead Protection will be available from year to year but is a much smaller amount of money. The protection/management efforts for Wellhead are ongoing based on the Wellhead Protection regulations. Additional concerns are also anticipated to be targeted as a followup of the susceptibility analyses performed for each water system.

We agree that the Wellhead Protection Program and the Watershed Management Program are excellent choices to approach source water protection for both ground water and drinking water. It is unclear, however, whether TDEC is proposing anything different than just continuing the programs which are already existing. ETHP is familiar with the watershed management process and is working with TDEC staff on this program. To our knowledge, the watershed management approach is not incorporating as a part of their assessments any source water protection information. We suggest that TDEC incorporate source water assessment information as a part of the watershed management process from here on and conduct retroactive evaluations for those watersheds already underway.

State response: The integration with Watershed Management was discussed in the public meetings and is in the second draft of the Overview that was handed out at the meetings and is in the submittal document. Tennessee is a leader in this incorporation and presented its approach to the EPA Region IV states and EPA staff in November, 1998. The Source Water Assessment Program will be providing the detailed information to the Watershed Management Program for their assessments and the WMP assessments will be relied upon for a continuing process to keep the information updated. SWAP is actually timing the individual water systems' assessments to synchronize with Watershed Management's assessment cycle so that the individual watershed reports will have this information available. Both Congress and EPA have stated that EPA approved wellhead protection programs are adequate to address the ground water requirements of Source Water Assessment/Protection. Wellhead protection is an ongoing program with regulations to enforce, although the susceptibility analyses will effectively add a more formal followup phase. As was stated previously, the Division does not see a need for integration with Source Water – they will be handled one and the same.

The strong emphasis on the wellhead protection program, while important, misses an important opportunity to protect those surface water drinking sources which are prevalent in East Tennessee. As stated above, Congress intended for the SDWA Amendments to take an additional step toward the protection of surface waters. The point of the SWAP program is not to identify those areas which have already been contaminated but to

identify those areas which are drinking water sources and begin the process of protecting them by assessing their worth. The fact that there have been no violations for chemical drinking water standards for surface water systems and there has been filtration systems for over 20 years for surface water systems in Tennessee is beside the point. Protection of source waters emanating from both ground and surface water must become a goal for TDEC's SWAP program as both provide necessary drinking water for Tennesseans.

State response: There is an important distinction between Source Water Assessment, required by Congress and Source Water Protection which comes from the integration of SWAP with the other existing programs. Protection has always been understood as the overall goal of SWAP, but through the linkage with the Watershed Management Program.

We suggest that Tennessee's SWAP program approaches the protection of source waters beginning with a broad level of focus on a watershed or basin approach and then a second and more detailed level of evaluation on smaller segments within that watershed. Throughout this process, a multi-stakeholder team is a part of the assessment for that delineated area or set of areas who gathers information and evaluates susceptibility. This approach does not choose the emphasis on ground water or surface water. It begins with a geographic area and then incorporates how existing programs can be integrated into the assessment. This overall approach allows for a broad approach toward the protection of source water but is also sensitive to avoiding duplication of current programs already underway for implementation under the Clean Water Act and the Safe Drinking Water Act.

State response: The focus of the Source Water Assessment Program must concentrate on potential contaminant sources upstream of public water intakes that could reasonably be considered a threat to the water source. A watershed-wide approach is at a level of detail TDEC has neither the time or resources to do. There are 180 intakes across the state in a total of 73 counties – coordination and training of a “multi-stakeholder team” in each area would be a Herculean task in the 3 years the states have to accomplish the assessments. Neither Congress nor EPA has required that multi-stakeholder teams be used in the assessments and TDEC is not amenable to doing so. It would also be difficult to maintain consistency and the amount of training time would be considerable.

Identifying willing partners representing a broad range of areas (business, community, environmental concerns, etc.) that would be required for an unbiased study would be extremely difficult and time intensive. The reason TDEC is contracting out this work is that TDEC does not have the resources available to do the assessments. Finding part-time volunteers (or even part time professionals) to complete the assessments in three years in a consistent format necessary for GIS work would be extremely unlikely, if not impossible.

On the other hand, TAUD personnel are already very familiar with the personnel and operation of the state's public water systems. They can quickly and easily be trained and equipped to gather the necessary information (some are former TDEC employees, others have worked at water treatment plants) and to report it in a consistent and useful format. Furthermore, the contracting process between the Department and TAUD, a legal entity,

provides for funds accounting, schedules of completion, deliverables, and assurances of performance which are not obtainable for volunteers performing uncontracted work.

6. ETHP does not believe that the susceptibility determinations provide the full range of information available to citizens which will make it useful and understandable to decisionmakers. The susceptibility determination proposed by TDEC takes a first step toward giving an excellent visual idea of what is affecting a particular drinking water system. What the determination does not seem to provide is any analysis of what are the existing threats, potential threats, and unlikely threats; which are the most likely threats; effectiveness of mitigation measures for significant potential sources; who the threats are (e.g., NPDES permit holders) and how the assessments will be linking with future protection of source waters such as WHP or TMDLs. In addition, there is no indication that TDEC will be incorporating the breadth of information already available through other federal agencies in these assessments. Does TDEC intend to use information from outside sources? Which sources do they intend to use? How will they be incorporated? We would like to suggest that focused public participation be a part of developing the assessments so they will be helpful to decision-makers and the public. We believe this is much more definition that can be placed on what information are provided in these assessments and how the information is communicated to the public. At this time we do not see how these assessments will help in the development of a source water protection program.

State response: The whole idea of the Susceptibility Analysis was to make it readily understandable to the general public and the decisionmakers. {Note that in the clarification meeting of January 26th, it was apparent there was some confusion on the part of ETHP that the susceptibility analyses would be one per watershed rather than one per intake. It is understandable that they would be concerned if there were only one per watershed but that has never been even remotely considered.} A complex evaluation that requires professional expertise to understand would not have served the general intent of the SWAP program. A more detailed analysis is beyond the practical scope of the source water assessments at this time for the literally thousands of potential contaminant sources. The Division of Water Supply does not have the resources or expertise to do these in depth studies (e.g., effectiveness of mitigation measures, etc.) nor the resources to pay a contractor to do so. There will be a table and map of identified potential contaminant sources within the watershed upstream of the intake or within the wellhead protection area in addition to the susceptibility analysis. Source Water Assessment is seen as an iterative approach. Followups are intended for those identified concerns but will be addressed with the cooperation of the appropriate agency.

TMDLs are only required to be developed for 303d listed streams. The Division of Water Supply is unaware of any intakes on 303d listed streams, although there

may be a small number. 303d listed streams are factored into the susceptibility analysis. There will be consideration for this in the individual Watershed reports for the Watershed Management program. There is no reason to consider links of source water and wellhead protection – the same personnel are doing both and the susceptibility analysis is merely a followup on previous work. ?

The Division is unsure of what federal agencies are being referred to – the vast majority of “federal agency” data is actually generated by state agencies. The Division will be relying on this information as well, but will have considerable emphasis on field identification. The Division and its contractor will be working with the Tennessee Valley Authority, U.S. Geological Survey, Army Corps of Engineers and Natural Resource Conservation Service as well and have committee members from these agencies.

Opening up the work to “focused public participation” would be impossible to do under the federally mandated timeframe with the resources available. Public participation after the initial assessment phase and in the Watershed Management Program is a given. “Focused public participation” in the development of the assessments would be counterproductive and too subjective. The Division is duty bound to make these assessments as objective as possible – hence the susceptibility analysis method which is designed for objectivity and simplicity. The Division of Water Supply is NOT targeting specific industrial facilities, nor were there any requirements to do so in the 1996 SDWA Amendments. Tennessee's SWAP will be looking at specific types of activities – hence the reliance on SIC codes. Feedback from the other states consistently indicates that they are doing likewise. The Division is unclear how ETHP could make the statement that “we do not see how the assessments will help in the development of a source water protection program.” The Division is strictly following the requirements of the 1996 SDWA Amendments and EPA guidance. The link to the Watershed Management Program provides the key to source water protection in Tennessee. The intent of Congress and EPA was not to make a stand-alone Source Water Protection Program. It was to incorporate source water protection into existing programs, which Tennessee is doing.}

7. It is unclear from reading the SWAP proposal who will be delegated certain portions of the SWAP program, what other government entities will be involved in the program and how.

State response: There is no “delegation” because there are no new regulations accompanying SWAP. SWAP will involve TDEC and the Department of Agriculture in the ongoing effort to protect “waters of the state” as a matter of routine. TDEC does not have the authority to require local government participation. Voluntary local government participation is anticipated, but at varying intensities across the state.

8. We are generally unclear whether TDEC set aside any money for TMDL development. Has any decision been made not to set aside any money for TMDL development. Is there still an opportunity so long as the criteria outlined by EPA guidance is met? See Appendix A {EPA Guidance for DWSRF}.

State response: Note the EPA guidance regarding setaside use says that it may be used in very limited circumstances. EPA DWSRF guidance specifically states that those circumstances are where “a clear cause and effect relationship can demonstrate that development of the TMDL is essential to public health protection and continuing compliance with national primary drinking water regulations.” Since TMDLs are only required to be set for 303d listed streams and the public water system intakes are not on 303d listed streams this would only peripherally involve source water protection and does not fit those limited circumstances. The Source Water Protection setasides will barely be sufficient to perform the required activities. The Public Water System Supervision setaside is being used to offset severe state budget cuts in the Division of Water Supply.

9. We agree with the TDEC proposal for using GIS information.

State Response: The Division appreciates your support.

J) Under the 1996 amendments to the Safe Drinking Water Act, states may use a portion of the Drinking Water State Revolving Fund (DWSRF) to protect both surface and underground sources of drinking water (i.e., source water). Source water protection begins in local communities with the identification of sources of public drinking water supplies and the assessment of potential contamination threats to these supplies. Some of the DWSRF funds can be used to fund these assessments. In the 1996 Amendments to the SDWA, Congress included a number of important provisions related to SWP beyond the SWAPs, including: (1) continuation of the WHP program (section 1428) and new authority for states to support their WHP efforts through use of DWSRF funds [section 1452(k)(1)(D)], (2) a new, optional petition program (section 1454) that states may use to help overcome cross-program coordination barriers and facilitate voluntary, incentive-based SWP efforts based on locally driven partnerships, and authorization to use DWSRF funds to carry out such programs [sections 1454(a)(1)(B)(I) and 1452(k)(1)(A)(iii)]; (3) authority for states to use DWSRF funds to administer or provide technical assistance through SWP programs, except for enforcement actions [sections 1452(g)(2)(B) and (D)]; (4) new authority to provide localities with DWSRF loans that may be used to purchase land or easements from willing sellers or grantors, if the purpose is to protect source water and ensure drinking water standards compliance [section 1452 (k)(1)(A)(i)], and (5) new authority to provide loans to communities to implement local, voluntary, incentive-based SWP measures [section 1452(k)(1)(A)(ii)].

State response: The concept of non-construction conservation type projects is an excellent one, but the resources from the setaside are badly needed elsewhere. Section

1453 states that these non-construction type projects can only be from setaside monies and not general loan funds. Tennessee's basic breakdown in percentages is:

10% Public Water System Supervision: This money is being used to offset a budget cut from state appropriations (the Division is basically operating off of fee collection and federal dollars – there are no state dollars). Without this, the Division would have lost approximately 1/3 of its Drinking Water Staff.

4% Administration of the State Revolving Fund

2% Small Systems assistance: Fleming Training Center. Our Center for training water system operators would also have ceased to exist due to state appropriation cuts had this money not been available.

10% Source Water Protection: These funds will likely be barely adequate for the task at hand and there is no other funding to perform these activities.

3% Wellhead Protection (could have asked for 5%): This is the first funding that has been available for wellhead protection. The burden for wellhead protection has been on the systems and the Division until this point. This will be used to comply with the Source Water Assessment requirements for ground water systems.

With the exception of wellhead protection, the maximum allowable percentages are already being spent essentially to maintain status quo and develop the source water assessment program.

K) The ETHP would like TDEC to reconsider their decision not to develop a voluntary petition program. With the exception of further development of the Wellhead Protection Program, we do not see any indication TDEC intends to utilize the other opportunities provided under Section 1452 of the SDWA listed above. In particular, the ETHP recommends that localities be authorized to purchase land or easements from willing sellers or grantors as provided for under section 1452(k)(1)(A)(i). This is an important opportunity which will help allow for the protection of source waters.

State Response: There are two reasons why the State does not intend to develop a petition program. One is stated in the Overview. It is that the Petition Program envisioned by Congress is of extremely limited scope - only be available for those systems where there are repeated violations above drinking water standards. The Division of Water Supply does not believe a voluntary petition program goes far enough in that case. The second reason is that there have been no surface water systems with repeated violations in Tennessee. The Division would be developing a petition process for a category of systems that do not exist for surface water systems and the voluntary Petition process would not lend itself readily to ground water systems.

This is not to say the Divisions of Water Supply and Water Pollution Control will not work with local groups – just that it is not necessary to create a formal petition process for such a limited scope of water systems, particularly when Tennessee doesn't even have systems fitting into that category.

Public Participation

L) We appreciate the efforts of TDEC to comply with the requirements of the SWAP program. We do not agree, however, that the requirement that states involve the public to the “maximum extent possible” was achieved. To our knowledge, there were two public and technical advisory meetings and three “public meetings” the week before Christmas. Earlier public meetings and/or workshops to fully engage the public in order to help shape this program would have been more helpful. In other states, public workshops to help educate the public and engage them in the development of the source water assessments were conducted in June 1998 before the public hearings. We understand that the SWAP proposal was on the web for a long time but there is nothing to indicate the document (which is extremely difficult to download because of graphics) was even a proposal which the public could even comment. Indeed, it is on the webpage as if it is a final program – not the proposal.

State response: “Maximum extent possible” is obviously a very nebulous term and open to interpretation. { SECTION 1428(B) "To the maximum extent possible, each State shall establish procedures, including but not limited to the establishment of technical and citizens advisory committees, to encourage the public to participate in developing the protection program for wellhead protection areas and source water protection programs under Section 1453. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the administrator."} The Division used the resources it had available and made a good faith effort to comply with EPA guidance. It would appear from the language that the practical “yardstick” to determine whether a state has done the “maximum extent possible” is that a state develops a committee and holds public hearings prior to the submittal to EPA - which TDEC has done.

The Division followed its standard procedure for public notice as if the SWAP Program were being promulgated as regulation (which it is obviously not). The following information was published in newspapers in Knoxville, Jackson, Memphis, Chattanooga, Kingsport and Johnson City more than 30 days prior to the meetings:

There will be a public meeting with the Division of Water Supply Staff to hear comments from the public concerning the development of Tennessee’s Source Water Assessment Program pursuant to Section 1453 of the 1996 Safe Drinking Water Act Amendments. This section requires that all states establish Source Water Assessment Programs (SWAP), and submit a plan to the Environmental Protection Agency (EPA) by February 6, 1999 detailing how they will:

- Delineate source water protection areas.
- Inventory significant contaminants in these areas.
- Determine the susceptibility of each public water supply to contamination.

The public meetings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee code Annotated Section 4-5-204. The meetings will take place in Knoxville at the Knox County Health Department Auditorium, located at 140 Dameron Avenue, 1:00 pm EST on the 15th day of December, 1998; in Murfreesboro at the Fleming Training Center located at 202 Blanton Drive, 10:00 am CST on the 16th day of December, 1998 and in Jackson at the Department of Agriculture Assembly Room B on Airport Drive, 10:00 am CST on the 17th day of December, 1998. Written comments will be considered if received by close of business December 31, 1998. Written comments should be mailed to the

Tennessee Division of Water Supply, 6th Floor L&C Tower Building, 401 Church Street, Nashville, TN 37243-1549.

Any individuals with disabilities who wish to participate in these proceedings should contact the Department of Environment and Conservation to discuss auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department's ADA Coordinator, Mr. Isaac Okoreeh-Baah, Division of Real Property Management, 7th Floor, L&C Annex, 401 Church Street, Nashville, TN 37243-0449 whose telephone number is (615) 532-0059.

For further information, contact:

Thomas A. Moss
Source Water Protection Coordinator
TN Division of Water Supply
401 Church Street
Nashville, TN 37243-1549
(615) 532-0170.

Or the nearest office of the Tennessee Division of Water Supply at 1-888-891-8332.

An electronic copy of Tennessee's Source Water Assessment Overview may be obtained from the Department's Webpage at:

www.state.tn.us/environment/dws/index.html

The Overview on the TDEC webpage was unfortunately the early draft – there is a problem with the timely insertion of documents on the webpage beyond the Division's control. The webpage also gave the announcement of the public meetings. The Committee members were all notified in October and volunteered to let their constituency know about the meetings. The Division appreciates the Foundation for Global Sustainability's placing the notice on their webpage as well.

The reason the document was called an Overview was to differentiate it from being considered a proposal or draft submittal. The document was intended to generate interest and further contact. It was so nebulous and lacking in detail that the thought had not occurred to the Division that it would be construed as a final document; particularly when the proposal deadline was several months away. It is unfortunate that anyone might have construed that initial briefing document as the final document.

There is a problem downloading for those people using MacIntoshes. Unfortunately the persons with MacIntoshes did not indicate their problem to the webmaster, who could have remedied this by sending them a different type of file or a hard copy. To the Division's knowledge the webmaster received no inquiries on this and few if any on source water protection until very recently.

The Division recognizes that the Committee meetings and public meetings were held relatively late – this was a matter of resources and relying on the experiences of other

states (besides close contact in the development of SWAP in the other 7 SE states in EPA Region IV, staff have reviewed at least portions of SWAP materials from 16 other states and been in contact with all 49 other states). There have been states that held Committee meetings prior to even developing their basic concept of SWAP or determining resources available that were berated by their committees for coming to the meetings empty-handed. The committees saw the state personnel's job as developing the basic program for the committee's review – the state personnel were effectively told that they were the professionals and that's what they were getting paid to do.

*The Division had to get together information regarding available databases, possible scenarios, etc. prior to the meetings and was conferring with other states to streamline the process in light of the very short timeframe. **It is also of note that the other states took the majority of their meeting times to flesh out their wellhead protection programs since they had yet to develop their state's wellhead protection program. This was not necessary in Tennessee and gave us a considerable advantage.***

M) We had difficulty trying to figure out what needed to be commented on by December 31, 1998 until we attended the public meeting in late December. Once again, we appreciate the arguments about lack of resources. At the same time, however, we believe that public resources can be saved by a more comprehensive public process. Indeed, the SWAP program, with effective voluntary participation, could become an excellent opportunity to bring together citizens, professors, researchers, and others.

State response: SDWA Amendments required public meetings and the Committee work prior to the submittal to EPA on February 6th. It has only been since August 6, 1997 that the final EPA guidance was available – and there have even been followup clarifications several months beyond that. A lengthy public participation process which could easily have required a year or more to complete just was not possible with the February 6, 1999 deadline.

As has been stated previously in response to ETHP comments, with the resources and timeframe available it would be impossible to rely on voluntary efforts for a statewide effort involving 73 counties and 180 intakes. The Division's experience has been that voluntary efforts actually require a major expenditure in staff time for training, coordination, etc. There would also be questions of objectivity, consistency, liability and credibility in using volunteers. Even if sufficient volunteers were available, the compilation and manipulation of the information necessary for the final product by Division staff would be overwhelming. There would also be the administrative and legal considerations cited above. TAUD appears to be the most capable and objective entity available to perform this task and will be contracted to provide for the final product.